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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/033,178	12/28/2001	Jean-Michel Lerdu	Hamelin *3	7318

7590

11/20/2002

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EXAMINER

MACARTHUR, VICTOR L

ART UNIT

PAPER NUMBER

3679

DATE MAILED: 11/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application N	Applicant(s)	
	10/033,178	LERDU, JEAN-MICHEL	
	Examiner	Art Unit	
	Victor MacArthur	3679	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

The disclosure is objected to because the phrase "This is a continuation of Provisional Application..." in lines 2-3 of page 1, is an improper reference to a provisional application. See MPEP § 201.11 for information on properly referring to a provisional application.

Appropriate correction is required.

Claim Objections

Claim 1 is objected to because of the following informalities: the phrase "compromising" in line 1 of claim 1 appears to be a typo.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The limitation "said first mentioned [post]" is recited in line 2 of claim 7. There is insufficient antecedent basis for this limitation in the claim, as the elements were not previously recited in the claim itself or the claim(s) from which it depends. The examiner suggests properly distinguishing the "first mentioned post" as "the first vertical post" in claim 3 and referring to it

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as such throughout the claims. Claims 8 and 9 depend from rejected claim 7 thereby rendering these dependant claims indefinite.

The limitation "said last mentioned space" is recited in line 3 of claim 9. There is insufficient antecedent basis for this limitation in the claim, as the elements were not previously recited in the claim itself or the claim(s) from which it depends.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 2588147 to Morris (see attached marked-up copy).

As to claim 1, Morris discloses (figs1-6) a fence comprising an upper horizontal rail (11), a lower horizontal rail (12), boards (17) extending between the rails, at least one of the rails having separate half parts (A, B), each of the parts including a cooperating fastener (13, 20) for securing the parts together about the boards, at least one of the parts having longitudinally spaced ribs (C, D), each adjacent pair of ribs defining a space (18, 19) therebetween, and a board fitted into the space with the parts secured together about the boards.

As to claim 2, Morris discloses the fence of claim 1 wherein both of the parts have the longitudinally spaced ribs, the ribs being opposed when the parts are secured together with each adjacent pair of opposed ribs defining the space therebetween.

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As to claim 3, Morris discloses the fence of claim 1 and a first vertical post (E) extending transversely relative to the rails, the rails engaging the post.

As to claim 4, Morris discloses the fence of claim 3 and a second vertical post (15) extending transversely relative to the rails, the rails engaging the second post.

As to claim 5, Morris discloses the fence of claim 4 wherein each post fits between the parts of each of the rails. Note that the posts fit between the parts in the sense that there are parts on either side of the posts (15 and E).

As to claim 6, Morris discloses the fence of claim 1 wherein both of the rails have the separate half parts, at least one of the parts of each rail having the longitudinally spaced ribs.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 2588147 to Morris (see attached marked-up copy).

Regarding claims 7-9, Morris discloses the fence of claim 4 wherein each of the horizontal rails engage the first post and second posts and each rail has separate half parts, each of the parts of the rails including cooperating fasteners for securing the parts together and at least one of the parts of the rails include longitudinally spaced ribs, each adjacent pair of ribs defining a space therebetween, the board fitted into the space. Morris does not disclose a third horizontal

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rail located above the upper horizontal rail. It has generally been recognized that duplicating the components of a prior art device is a design consideration within the skill of the art. In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to duplicate one of the horizontal rails of Morris to form a third horizontal rail located above the upper horizontal rail, as such practice is a design consideration within the skill of the art.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Referring to fences:

USPN 6231031 to Michael et al (specifically fig.5);

USPN 5702090 to Edgman;

USPN 3975000 to Sado;

USPN 5938184 to DeSouza;

USPN 4421302 to Grimm et al.; and

USPN 6367213 to Reuer et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor MacArthur whose telephone number is (703) 305-5701.

The examiner can normally be reached on 8:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne Browne can be reached on (703) 308-1159. The fax phone numbers for the

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organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



VLM

November 18, 2002



Lynne H. Browne
Supervisory Patent Examiner
Technology Center 3600

Attachment: One marked-up copy of USPN 2588147 to Morris